

## WALTER EUGENE HAYES

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DECEMBER 9 (legislative day, DECEMBER 7), 1943.—Ordered to be printed

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Mr. ELLENDER, from the Committee on Claims, submitted the following

## REPORT

[To accompany S. 1484]

The Committee on Claims, to whom was referred the bill (S. 1484) for the relief of Walter Eugene Hayes, having considered the same, report favorably thereon with the recommendation that the bill do pass, without amendment.

The purpose of the proposed legislation is to pay to Walter Eugene Hayes the sum of \$4,000 in full settlement of all claims against the United States for personal injuries and property damage as the result of a United States Army airplane crashing into his truck on United States Highway No. 101, near Arroyo Grande, Calif., on May 6, 1941.

## STATEMENT OF FACTS

The report of the War Department states that on May 6, 1941, at about 2 p. m., the pilot of an Army airplane on an official flight, apparently attempted to make an emergency landing on United States Highway No. 101, at a point about 2 miles south of Arroyo Grande, Calif. As the airplane descended it struck a truck owned and operated by Walter Eugene Hayes, of Ojai, Calif., damaging the truck and injuring Mr. Hayes. The airplane then crashed on the ground. The pilot sustained injuries from which he died. The Aircraft Accident Classification Committee made the following report:

It is the opinion of the committee that the accident covered by this report resulted from engine failure of unknown and undeterminable cause, which occurred while Lt. Archibald Campbell was ferrying PT13A airplane from SAD to Santa Maria, Calif. In attempting landing on United States Highway 101, the left wing of airplane struck a truck loaded with furniture.

The immediate cause of the accident was the impact of the left wing with the cab of the truck, resulting in airplane being thrown to the left, crashing into the ground and being damaged beyond repair. The underlying causes of the accident were engine failure, resulting in emergency forced landing, and poor judgment of Lieutenant Campbell in endeavoring to land with a quartering tail wind on a heavily traveled highway.

Under date of January 14, 1942, Dr. Tonn made the following written statement for the record in this case:

Re Mr. Walter Eugene Hayes.

The diagnosis of his ailment is traumatic neuritis and chronic fibromyositis. The prognosis of his case is fair with continued treatment for a period of some months. At the present time he is 55 percent disabled and it is my opinion that he will improve under treatment to approximately 35 percent permanent disability.

A further statement by Dr. Tonn is contained in the War Department report which is appended hereto.

Mr. Hayes is indebted to Dr. Tonn in the sum of \$333; the damage to the truck was \$197.65; the insurance company paid 80 percent, or \$158.12, and claimant 20 percent, or \$39.53; he estimates \$1,369 as a year's loss of earnings. The War Department interposes no objection to the enactment of the bill for the evidence establishes that the accident was due to no fault or negligence on the part of the claimant, and states—

\* \* \* Considering all of the factors involved, including Mr. Hayes' age, annual earnings, and his preexisting physical condition, it is the view of the War Department that an appropriation of \$4,000 as provided by the bill would be a fair and reasonable settlement for all of the damages sustained by him.

Your committee feel this is a just claim and recommend that the bill be given favorable consideration.

Appended hereto is the report from the War Department.

WAR DEPARTMENT,  
Washington, D. C., November 22, 1943.

Hon. ALLEN J. ELLENDER,  
*Chairman, Committee on Claims, United States Senate.*

DEAR SENATOR ELLENDER: The War Department will interpose no objection to the enactment of S. 1484, Seventy-eighth Congress, which would authorize and direct the Secretary of the Treasury to pay to Walter Eugene Hayes, the sum of \$4,000 \* \* \* in full settlement of all claims against the Government for damages sustained by the said Walter Eugene Hayes on account of personal injuries and property damage sustained by him when a truck owned and operated by him was struck by a United States Army airplane attempting to make an emergency landing on United States Highway No. 101, near Arroyo Grande, Calif., on May 6, 1941.

On May 6, 1941, at about 2 p. m., the pilot of an Army airplane on an official flight apparently attempted to make an emergency landing on United States Highway No. 101, at a point about 2 miles south of Arroyo Grande, Calif. As the airplane descended it struck a truck owned and operated by Walter Eugene Hayes, of Ojai, Calif., damaging the truck and injuring Mr. Hayes. The airplane then crashed on the ground. The pilot sustained injuries from which he died. The Aircraft Accident Classification Committee made the following report:

"It is the opinion of the committee that the accident covered by this report resulted from engine failure of unknown and undeterminable cause, which occurred while Lieut. Archibald Campbell was ferrying PT13A airplane from SAD to Santa Maria, Calif. In attempting landing on United States Highway No. 101, the left wing of airplane struck a truck loaded with furniture.

"The immediate cause of the accident was the impact of the left wing with the cab of the truck, resulting in airplane being thrown to the left, crashing into the ground and being damaged beyond repair. The underlying causes of the accident were engine failure, resulting in emergency forced landing, and poor judgment of Lieutenant Campbell in endeavoring to land with a quartering tail wind on a heavily traveled highway."

No formal claim has been filed with the War Department by Mr. Hayes as a result of this accident.

It appears that the cost of repairing Mr. Hayes' truck was \$197.65, that his insurer paid 80 percent of this amount, and that the balance of \$39.53 was paid by Mr. Hayes.

With respect to the injuries sustained by him, Mr. Hayes stated on August 21, 1941, before the board of officers convened to investigate the case, that at the time of the accident he noticed only—

"\* \* \* just a very bad headache; it was not until I went over to the plane that I began to feel bad, the sight of the pilot made me very ill. \* \* \* The next day I went to a drug store to get a bromo for my headache, the druggist told me I should see a doctor. \* \* \* I first visited him [Dr. Drace] on May 9, 1941. \* \* \* I lost a lot of sleep, I was continually troubled by a vision of the plane coming toward the truck and the sight of the pilot after the accident. It was an awful sight."

Dr. E. F. Tonn, of Ventura, Calif., testified before the board of officers on August 21, 1941, that Mr. Hayes first came to him for treatment on June 23, 1941, and added:

"Hayes was suffering from neuritis brachial plexus left side and neuritis sacral and lumbar left side, for which I have treated him for the past 1½ months."

When asked if Mr. Hayes' injuries were caused by a shock, Dr. Tonn said:

"Yes; a severe trauma was evidenced, the injuries were of the strain-sprain type caused by a fall, attempt to lift something heavy, or a severe blow. \* \* \* The entire area of the neck, shoulder, back, and leg were extremely tender as was shown by his reaction to pressure. \* \* \* It was very apparent that Hayes' condition was the result of a heavy blow such as he described he experienced at the time of the accident. \* \* \* I would say that with normal response to treatment he should be able to resume light work in about 1½ months, and be fully recovered in 3 months; however, the case has been quite stubborn."

Answering a question as to how Mr. Hayes would have a tremor in his right hand when it appeared that he was injured on his left side, Dr. Tonn stated:

"Hayes received a shock to his entire nervous system; the tremor resulting from such a shock is not at all unusual."

Under date of January 14, 1942, Dr. Tonn made the following written statement for the record in this case:

"Re Mr. Walter Eugene Hayes: The diagnosis of his ailment is traumatic neuritis and chronic fibromyositis. The prognosis of his case is fair with continued treatment for a period of some months. At the present time he is 55 percent disabled and it is my opinion that he will improve under treatment to approximately 35 percent permanent disability."

In a statement dated March 30, 1943, Dr. Tonn (now first lieutenant, Army Medical Corps) said:

"I first saw Mr. Hayes in June 1941, as I recall. \* \* \* He complained of a back injury \* \* \*. I made a complete physical examination and found him suffering from a severe sprain of the back in the lumbar and sacroiliac region. At this time there was also present a severe myositis of the muscles of that region."

"The treatment consisted of strappings with adhesive at intervals of 4 to 5 days with daily diathermy and massage."

"This treatment continued for approximately a year with improvement to the extent that pain was absent except upon movement. I last saw him in September 1942 and do not believe further treatment will be of benefit. His locomotor control was greatly impaired due to pain."

"He reported to me the details of a collision between an airplane and his truck which occurred a few weeks prior to my first examination; he stated that he attempted to assist in extricating the pilot, who was killed, and the severe pain in his back developed a few days after the accident. I have no knowledge of any other injury than he reported to me as suffered in the aircraft accident."

"In my opinion Mr. Hayes is permanently injured and his physical disability was 50 percent at the time I last saw him."

"In my opinion, his condition will not improve with time."

"In my opinion, the injuries with which Mr. Hayes was afflicted when I last saw him could have resulted from the accident he described to have occurred about a month prior to the date I first examined him and arising from a collision between his motortruck and an airplane."

The following statement was made on December 15, 1942, by Mr. Hayes' attorney, in accordance with which the bill for his relief was drafted:

"Mr. Hayes was 57 years of age at the time of the accident. His life expectancy was therefore about 13 years. He feels that he has sustained damage, viz:

1. 100 percent loss of earning power from May 6, 1941, to June 21, 1941, at \$200 per month (14½ months)-----	\$2, 900. 00
2. 50 percent loss of earning power for balance of life expectancy----	11, 950. 00
3. Damage to truck not compensated-----	39. 53
Total damage sustained-----	14, 889. 53"

On March 22, 1943, Mr. Hayes made the following affidavit:

"b. For approximately 8 years prior to the date of this injury I operated my own transfer business, operating, personally, my own truck. I was licensed as common highway carrier and hauled all kinds of freight from point to point in this vicinity. I always had a helper with me but drove the truck, loaded and unloaded the truck, and performed whatever work was required to keep the business going.

"Since my injury I have been unable to perform any of this work personally. I have been able to answer the phone, write letters, send out bills, and exercise supervision of the business from my home. I have employed someone to operate my truck since, until recent months. It is now almost impossible to employ anyone to operate the truck due to labor shortage caused by the war. \* \* \*

"I have no other occupation I could follow, am not trained, educated, or skilled in any other line of endeavor, and have always been in the transportation business of some sort or employed as a laborer.

"I am in constant pain, never have any relief, can't sleep undisturbed, and have abandoned hope of recovery.

"c. My medical expenses are:

Bill of Dr. Tonn, previously rendered on and to June 17, 1942, is-----	\$319. 00
Further bill of Dr. Tonn up to August 12, 1942, is-----	14. 00
Total-----	333. 00

"I owe Dr. Tonn the sum of \$333 which I have not been able to pay.

"I estimate I have spent \$25 for drugs and medicine.

"My earnings, taken from my own figures prior to my injuries, is as follows:

	1940	1941
May-----	\$418. 50	\$167. 00
June-----	256. 00	247. 00
July-----	392. 00	159. 00
	1, 066. 50	573. 00

"I estimate that 50 percent of these figures would be used for expense of operation in 1940. I estimate I made, net, \$2,133 in 1940. In 1941 I estimate two-thirds of the gross earnings were used as expenses because I had to hire someone to take my place on the truck. I believe, therefore, I did not make more than one-third net from operations in 1941. I believe my net earnings in 1941, based on May, June, and July figures, did not exceed \$764.

"I do not believe my earnings for 1942 and 1943 will exceed this estimate for 1941 of \$764.

"My loss of earnings, therefore, I estimate to be \$1,369 a year.

"The damage to the truck caused by the collision was \$197.65 and I received from the insurer 80 percent of this sum. The other 20 percent which amounts to \$39.53, I paid myself.

"My damages, therefore, are:

Dr. Tonn-----	\$333. 00
Property damage-----	\$39. 53
Loss of earnings-----	\$1,369.00 a year."

On request for further information concerning the present condition of Mr. Hayes, a board of four medical officers of the Army convened at the direction of the surgeon, station hospital, Santa Maria, Calif., on June 12, 1943. Mr. Hayes was interrogated and examined by these officers in the presence of his attorney, and the following findings were made:

"a. Mr. Walter Eugene Hayes of Oaji, Calif., age 58, is at present suffering from: (1) generalized arteriosclerosis, (2) pulmonary emphysema, (3) hypertrophic arthritis of spine, (4) presbyopia, (5) anxiety state following psychic



trauma; and the permanent disability incidental thereto is 50 percent. One-half of the permanent disability is considered to be due to the anxiety state resulting from psychic trauma.

"b. The anxiety state following the psychic trauma is considered to be due to the aircraft accident occurring on May 6, 1941. Other physical findings are those accompanying the arteriosclerosis and degenerative changes for Mr. Hayes' age period."

These findings are in accord with an analysis of the proceedings of the board of officers made by First Lt. Elwood F. Tufts, Medical Corps, on June 20, 1942, in which he stated:

"\* \* \* that the physical defects described as tremor of the right hand and associated nervous pathology were not sustained as a result of the accident under investigation. This lesion is usually due to a degenerative process."

It appears that Mr. Hayes' wife, who is about 55 years of age, is his only dependent.

The evidence establishes that the property damage and personal injuries sustained by Mr. Hayes in this accident were due to no fault or negligence on his part, but were caused by engine failure of an Army airplane while on an official flight. Under the circumstances it is the view of the War Department that he should be compensated in a reasonable amount for the damages sustained by him. It is apparent from the record that Mr. Hayes had some latent physical defects that have been aggravated by the accident. Considering all of the factors involved, including Mr. Hayes' age, annual earnings, and his preexisting physical condition, it is the view of the War Department that an appropriation of \$4,000 as provided by the bill would be a fair and reasonable settlement for all of the damages sustained by him. The Department, therefore, interposes no objection to the enactment of the bill.

The fiscal effect of the bill is manifest.

A similar report to the chairman, Committee on War Claims, House of Representatives, on a similar bill, H. R. 1050, Seventy-eighth Congress, for the relief of Mr. Hayes, was submitted to the Bureau of the Budget which advised that there would be no objection to the submission of the report.

Sincerely yours,

HENRY L. STIMSON,  
*Secretary of War.*

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